IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1158 OF 1989

Maharashtra State Electricity Board ...Appellant
Vs.
Suman Ramchandra Harphale ...Respondent

Miss A.R.S. Baxi for the Appellant.
Shri Nitin P. Deshpande for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : APRIL 12, 2006.

JUDGMENT:

1. I have heard the submissions of the learned Advocates appearing for the parties. The Appellant-The Maharashtra State Electricity Board has taken exception to the judgment and decree dated 31st August, 1989 passed by the learned Civil Judge, Senior Division, Pune in a suit filed by the Respondent-original Plaintiff. By the impugned judgment and decree, the Appellant has been directed to pay a sum of Rs.3,00,000/- to the Respondent with interest thereon at the rate of 6 per cent per annum from the date of the suit till realisation.

2. With a view to appreciate the submissions made by the Advocates appearing for the parties, it will be necessary to refer to the facts of the case. The Respondent is the widow of one Ramchandra Pandharinath

Harphale. The suit is filed for claiming damages on the ground that deceased Ramchandra died due to negligence on the part of the Appellant.

3. According to the case of the Respondent, on 12th June, 1981 at about 03.30 p.m., the Respondent was returning from Hadapsar to Fursungi by a public road which is located adjacent to a canal. While passing through the road, a live electrical wire of the Appellant fell on deceased Ramchandra. He suffered burn injuries. He was immediately taken to Sasoon Hospital, Pune and was subsequently shifted to Ruby Hall Clinic at Pune. The said Respondent succumbed to death on 14th June, 1981 on account of burn injuries.

4. According to the case of the Respondent the wire which fell on the person of deceased Ramchandra was carrying electricity supply of 22 K.V. As per the rules a guard-wire was not fixed below the said live wire. It is alleged that the wire was not maintained in proper condition. It was alleged that the pole on which the wire was hanging was not properly fixed by taking a proper foundation and the pole was shaking. Though the persons staying in locality had complained to the employees of the Appellant about the condition

of the pole, no steps were taken by the Appellant and there was total negligence on the part of the employees of the Appellant. It is alleged that the spot where wire fell on the person of the deceased was located at the distance of one to two furlongs from the power house of the Appellant located at village Fursungi. The Respondent is the widow of the deceased having two minor children. According to the case of the Respondent the deceased was in service and was drawing monthly income of Rs.700/-. According to the Respondent age of the deceased was only 29 years and would have continued in service at least for thirty years. According to the Respondent, notice was issued to the Appellant calling upon the Appellant to pay compensation of Rs.3,00,000/-. However, there was no response to the said notice.

5. The Suit was resisted by the Appellant by filing written statement. According to the Appellant one Shri S.G. Pote, the then Junior Engineer attached to Fursungi power house made inquiry regarding the circumstances under which accident occurred. It is contented that during course of inquiry he recorded a statement of one Jaisingrao Deshmukh, a resident of Fursungi. According to the Appellant it transpired during the inquiry that due to heavy storm on 11th

June, 1981 the pole carrying electrical wire was uprooted. It is contended that husband of deceased was returning from Pune to his village. According to the case of the Appellant, without any reason, the deceased touched the wire which had come down inspite of warning given by the persons in the vicinity not to touch the wire. It is stated that deceased took the risk of touching the wire and therefore, he got electrocuted. It is contended that victim was under an influence of liquor at the relevant time. It is alleged that the victim was himself responsible for the accident. It is contended that the incident of accidental fall of live electrical wire was due to act of God viz; storm which took place on that day.

6. The Trial Judge after giving an opportunity to the parties to lead evidence held that the case for payment of compensation is made out and accordingly the suit was decreed.

7. The learned Advocate appearing for the Appellant submitted that there was absolutely no negligence on the part of the Appellant-Electricity Board. She submitted that it was the Appellant who voluntarily touched the live electrical wire. She submitted that the pole on which live electrical wire

was fixed was uprooted due to storm. She submitted that the evidence on record shows that there was absolutely no negligence on the part of the Officers or employees of the Appellant. She invited my attention to the evidence on record. She submitted that even assuming that case of negligence is made out, the compensation of Rs.3,00,000/- is excessive and there is no foundation for awarding such a huge amount. The learned Counsel appearing for the Respondent submitted that the case of negligence has been clearly established by leading necessary evidence. He placed reliance on certain decisions of this court and Apex Court and submitted that the quantum of compensation is not at all on the higher side. The Respondent has been granted interest at the rate of only 6 per cent per annum and in fact the same ought to have been 12 per cent per annum.

8. The learned Counsel appearing for the Appellant submitted that decisions which are relied upon by the Respondent arise out of Claim Petitions under the Motor Vehicle Act, 1988 and ratio of said decisions have no application to the present case.

9. Considering the submissions which are made by the Counsel appearing for the parties, following

questions arise for my determination:

(i) Whether the death of deceased Ramchandra was caused due to negligence on the part of the employees of the Appellant?

(ii) If the answer the first question is in favour of the Respondent, whether the amount a compensation fixed by the Trial Court is excessive?

10. So far as the first point is concerned, the Respondent Suman Ramchandra Harphale who was P.W.1 has no personal knowledge. The Respondent examined one Bhim Babanrao Kad as P.W.2. He stated that he is staying at a distance of about 50 ft. from the spot of the incidence. He stated that a road from Fursungi to Hadapsar goes by the side of a canal and by the side of his residential locality. He stated that at the time of accident he was standing in front of his house near the canal. He stated he heard shouts of deceased Respondent after a live wire fell on his person. He stated that he went to the spot where Suresh Kamate also came alongwith other persons in the locality. He stated that the electrical pole was in a ditch under water of the canal and said pole was in a

shaking condition. He stated that persons from his residential locality had informed the concerned wireman of the Appellant about the condition of the pole but the repairs were not carried out by the Appellant. In the cross-examination he admitted that he himself had not complained about the condition of the pole. He denied the suggestion that he has not personally seen the incident. Though the Appellant had taken a stand in the written statement that the deceased was under the influence of liquor at the time of incident, no such suggestion was given to the said witness.

11. P.W.3 Suresh Namdev Kamate stated that he was also an employee of M/s.Bharat Forge Company alongwith the deceased. He stated that on the date of the incident at about 3.30 p.m. he alongwith the deceased and one Baban were going towards their respective houses from their company. He stated that deceased Ramchandra was ahead of him at the distance of 500 ft. when all of sudden electrical wire fell on the person of the deceased. He stated that the pole on which the wire was hanging fell down. He stated that clothes on the person of the deceased were burning. He stated that deceased was seriously injured and was taken to Sasoon Hospital at Pune. In the cross-examination he

stated that he alongwith deceased had served for period of 17 to 18 years in M/s. Bharat Forge Company. However, at the relevant time there was a strike going on in the company. A suggestion was given that live wire did not fell on the person of the deceased but the said suggestion was denied. He also denied the suggestion that it is the deceased who caught the live wire and he died due to his own negligence. To this witness also no suggestion was given that the deceased was under the influence of liquor. P.W.4 is one Laxman Pandharinath Harphale. So far as Laxman is concerned, he is not the eye-witness. He is the younger brother of the deceased and his evidence may not be relevant on the issue of negligence. P.W.5 Sanguanna Andappa Birajdar is the representative of the employer of the deceased who had no personal knowledge about the accident. P.W.6 Waman Bhagwan Bhosale is the photographer who proved the photographs which were admitted in evidence.

12. The Appellant examined one Shankar Ramchandra Jadhav (D.W.1). He was working at the relevant time with the Appellant as an Assistant Lineman at Fursungi. He stated that on the relevant day he was informed by nephew of one Jaysingh Deshmukh from

Fursungi that a person has suffered shock as a big electrical pole had fallen near Bendevadi. He, therefore, proceeded to the sub-station at Fursungi where he was told by the operator that electrical pole from the new line had fallen and one person has received shock of live wire. He verified that the main line was put off. He visited the site of the incident and he reported the incident to his superiors. He stated that the pole had fallen down due to storm. In paragraph 4 of his cross-examination, he stated that it was his duty to check the poles and wires on the line at the time of accident. He stated that he had checked the fallen pole on many occasions and he had maintained notes of inspection and the record pertaining to the notes was in his office. He denied that residents of Fursungi had complained that the pole was about to fall.

13. One Suresh Gopal Pote, a Junior Engineer of the Appellant was examined by the Appellant at the relevant time. He was incharge of Operations and Maintenance at Fursungi Section Office of the Appellant. He stated that he learned about incident at about 5.30 p.m. on that day. Then he visited the spot of the incident. He admitted that the wire which caused the accident was a 22 K.V. power line. He

stated that he held inquiry and he examined one Deshmukh guruji who in the inquiry stated that the pole had fallen due to heavy storm. He further clarified that inspection of every pole was made once in a week. He stated that an entry of the accident is made in the sub-divisional office of the Appellant. He stated that a register is maintained in the office for making entries of "patrolling reports" of the concerned linemen. He stated that inspection reports prior to 16th June, 1981 of the disputed line are available in the office. He stated that he submitted inquiry report to the sub-divisional office but the report is not produced on record. One Mr S.M.Ghosh is examined as D.W.3 by the Appellant. He was an Assistant Engineer in the Hadapsar sub-division at the relevant time. He stated that he submitted detailed report to his superior officer about the incident. Nothing much turns of his evidence.

14. At Exhibit 20 the Appellant has produced an office copy of notice dated 28th July, 1981 sent by the Advocate appearing for the Respondent to the Superintendent Engineer of the Appellant. In the said notice a specific allegation has been made regarding negligence on the part of the employees of the Appellant. It is stated that live wire fell on the

person of the deceased as a result of which he suffered burn injuries. The postal acknowledgment of the said notice is produced at Exhibit 21. There is no dispute about the service of the notice to the Appellant. It is pertinent to note that no reply was issued by the Appellant controverting very specific allegations of negligence made in the said notice. A letter dated 18th February, 1984 is on record at Exhibit 23 which is send by the Executive Engineer of the Appellant to the Respondent. By the said letter the Executive Engineer called upon the Respondent to submit necessary documents in support of claim for compensation. One of the documents mentioned the said letter is consent letter signed by all the legal representatives of deceased to the effect that they have accepted the amount of compensation which may be offered by the Appellant. The said letter was replied by the Respondent by a letter at Exhibit 22. In the said letter Respondent very pertinently mentioned that there was no question of giving consent letter as Appellant has not indicated the amount which was offered way of compensation. In the letter dated 18th February, 1984 (Exhibit 23) the Appellant called upon the Respondent to furnish a salary certificate of the deceased from the learned Judicial Magistrate First Class. Another demand was made by the Appellant in

the said letter for submitting succession certificate issued by the learned Judicial Magistrate First Class to the Respondent-widow. The Appellant pointed out in her reply that the learned Magistrate has no power to issue such certificate. The letter issued by the Appellant at Exhibit 23 reflects upon the approach of the Appellant. It is surprising that a demand was made by the public body like Appellant to the widow of the deceased to get salary certificate and succession certificate issued by Judicial Magistrate. It was impossible for the Respondent-widow to procure such certificates as the learned Judicial Magistrate had no power to issue such certificates. Without mentioning the amount offered by the Appellant a demand was made for consent letters of acceptance from legal representatives of the deceased. To put it mildly, such demands made by the Appellant as a condition for grant of compensation were unjust and unfair. This is not the only disturbing future of this matter. A stand appears to be taken as is reflected from the written statement that deceased was under the influence of liquor at the time of incident. The said specific stand is taken in paragraph 6 of the written statement. As pointed out earlier, no such suggestion was given to the eye-witnesses who were examined by the Respondent. None of the witnesses who have

deposed on behalf of the Appellant have substantiated the said contention. The D.W. 2 examined by the Respondent stated that he held inquiry about the accident. He stated that he examined one Deshmukh Guruji, as a witness in inquiry who stated that it was deceased who voluntarily touched the live wire. The Appellant has not chosen to examine the said witness Deshmukh guruji.

15. The learned Advocate appearing for the Appellant during course of her submissions had pointed out that on 30th August, 1989 an application was made at Exhibit 56 stating that the Appellant was not in a position to procure the presence of the said witness Deshmukh and therefore, time of one month should be granted. The learned Trial Judge has passed a detailed order on 30th August, 1989 on the said Application. It is stated in the order that on 23rd August, 1989 time was granted upto 30th August, 1989 to the Appellant to procure the presence of the said witness. It is stated that sufficient time was available to the Appellant to procure the presence of the said witness. However, the Appellant failed to do so. It is pertinent to note that though a specific order of rejection has been passed on the said Application at Exhibit 56 in the memorandum of the

Appeal, the said order has not been specifically challenged. The only ground taken is that an Application was made on 30th August, 1989 and on the next day the judgment was pronounced. Even the said ground does not appear to be correct as File 'D' of the record of the Trial Court shows that Advocate appearing for the Appellant made extensive submissions and the learned Trial Judge has taken detailed notes of said submissions running into three pages. It is also pertinent to note that the report prepared by the so called Enquiry Officer is not produced by the Appellant before the Trial Court. The initial burden may not be on the Appellant but when the Appellant came out of with a case that an inquiry was made by its officer and a report was submitted, the said report was certainly relevant for purposes of deciding the controversy involved in the suit. It was the duty of the Appellant to place on record the said report. As the said report, is not placed on record, this is fit case for drawing adverse inference against the Appellant.

16. The evidence of the witnesses examined by the Respondent shows that while the deceased was proceeding on public road, live electrical wire fell on the person of the deceased. Atleast two witnesses

have stated that villagers repeatedly complained to the Appellant electricity board about the precarious condition of the pole on which the wire was rested. The defence of the Appellant is that of an act of God. No eye-witness has been examined by the Appellant to establish that there was a storm and the pole came down as a result of the storm. If witness Deshmukh Guruji was not available, attempt could have been made to procure the presence of other witnesses as number of persons were present at the time of the incident. The witnesses examined by the Appellant have taken a stand that the pole was regularly inspected and record of the inspection was regularly maintained. Though it is admitted that the record was maintained, the said record was not produced before the Court. It is very difficult to understand why said record was kept back from the court alongwith the report of the inquiry. These vital documents were suppressed. An attempt was made to produce a certificate of Gram Panchayat at Exhibit 15/B to show that there was a storm. Surprisingly, the Appellant did not examine the office bearers of Gram Panchayat to prove the said certificate. Thus, the witness Deshmukh Guruji was not the only witness who could have deposed in favour of the Appellant and therefore, the Appellant cannot make grievance about the order of the Trial Court of

rejection of the Application at Exhibit 56. If this is the kind of evidence on record, it is very difficult to find fault with the conclusion drawn by the learned Judge. The case of the Respondent was that the pole was not maintained properly. The case of the Appellant was that the pole was regularly checked and inspected. The eye-witnesses have stated that live wire fell on the person of the deceased. There is nothing on record to substantiate the contention that the deceased was under the influence of liquor or it was the deceased who voluntarily touched the live wire. The inference which can be drawn from the evidence on record is that the employees of the Appellant failed to perform their duty of maintaining the pole in proper condition. The photographs which were exhibited on record show that the pole was in the middle of the canal. The Appellant was duty bound to take all possible care to avoid injury to the members of the public especially when the wire was carrying supply of 22 K.V. The Appellant has withheld important document such as record of the periodical inspection of the poles which was admittedly available in the office of the Appellant. Thus, the finding recorded by the Trial Court about negligence on the part of the Appellant cannot be faulted with.

17. The Respondent who is the widow of the deceased has stated that age of the deceased was 30 years at the time of incident. She has stated that the deceased was an employee of M/s.Bharat Forge Company and was drawing pay of Rs.750/- per month. P.W. 3 Suresh Pote who is an eye-witness and who was also working in the same Company stated that both of them were in service for 17 to 18 years. Very little importance can be attached to the said statement of P.W.3. However, the Respondent has examined one Shri S.A. Birajdar who was at the relevant time officer of the employer of the deceased. He stated that at the relevant time, the daily wages payable to the deceased was Rs.27.98/-. He has produced a certificate to that effect which is at Exhibit 33. In the re-examination a question was asked to the effect that if the deceased would have been alive what would have been his salary. The witnesse responded that deceased would have drawn salary at the rate of Rs.2000/- to Rs.2100/- per month. Age of the deceased was thirty years at the time of incident. In the further cross-examination the witness reiterated that the salary of deceased Ramchandra on the basis of minimum wages at the relevant date would have been Rs.2,000/- per month.

18. There is no reason why the compensation should not be computed by adopting the test laid down by the Fatal Accidents Act. In a recent decision of the Apex Court reported in (2005) 6 Supreme Court Cases, Page 236 (TNSTC Ltd Vs. S. Rajapriya & Ors) the Apex Court held that in case of a deceased whose age was thirty-eight years, multiplier of 12 be applied. The Apex Court in the said decision held that the highest multiplier will be 18 and the said multiplier will be applied for the age group of 21 to 25 years. For calculating the multiplicand the law laid down by the Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thoma (Mrs) and Ors. reported in 1994 (2) Supreme Court Cases, Page 176 will have to be applied. The Apex Court in the said decision held that where there is material on record to show that there were future prospects of advancement in life and career, the said fact will have to be taken into consideration for calculating the multiplicand. In the facts of the case before the Apex Court, the age of the deceased was 39 years and his income was Rs.1032/- per month. The Apex Court for the purposes of calculating compensation took the income as Rs.2,000/- to Rs.2,100/- per month. In the present case, the

Officer examined of the employer of the deceased has stated that if the deceased would have continued in service, his income in the year 1989 would have been Rs.2,000/- per month. If the age of deceased was 30 years, he had atleast 28 years of service. Therefore, for calculating the multiplicand even by adopting a conservative estimate, the income will have to be taken as Rs.2,000/- per month. A deduction of Rs.700/- will have to be made on account of personal expenditure. Therefore, the multiplicand will have to be calculated at Rs.1,300/- per month. Thus, the multiplicand will be Rs.15,600/-. The Apex Court has applied multiplier of 12 in case where deceased was 38 years old. In this case multiplier of 15 can be safely applied. Thus, the total amount payable will be Rs.2,34,000/-. The usual amount to Rs.15,000/- will be added to take amount to Rs.2,49,000/-. The suit was filed in the year 1981 in the form of an application under Order XXXIII of the Code of Civil Procedure, 1908. The suit was registered in the year 1985. The learned Judge has not granted any interest from the date of the incident till the filing of the suit. Moreover, no amount has been awarded on account of expenditure incurred on to hospitalisation of the deceased. It has come on record that from Sasoon Hospital the deceased was shifted at Ruby Hall Clinic

at Pune. If all these factors are considered, compensation of Rs.3,00,000/- awarded by the Trial Court cannot be said be on the higher side. Infact, it is the just and reasonable compensation arrived at by the Trial Court. So far as payment of interest is concerned, the submission made by the learned Advocate appearing for the Respondent is contrary to section 34 of the Code of Civil Procedure, 1980 and therefore, interest at the rate of above six per cent could not have been awarded.

19. There is no merit in the Appeal and the same is dismissed. The Appellant will pay costs of the Appeal to the Respondent.

JUDGE